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ROBERT VACCARI, and JAKE ADAMS

9 **UNITED STATES DISTRICT COURT**

10 **CENTRAL DISTRICT OF CALIFORNIA**

11  
12 L.C., a minor by and through her  
13 guardian *ad litem* Maria Cadena,  
individually and as successor-in-interest  
14 to Hector Puga; I.H., a minor by and  
through his guardian *ad litem* Jasmine  
15 Hernandez, individually and as  
successor-in-interest to Hector Puga;  
16 A.L., a minor by and through her  
guardian *ad litem* Lydia Lopez,  
17 individually and as successor-in-interest  
to Hector Puga; and ANTONIA  
18 SALAS UBALDO, individually,

19 Plaintiffs,

20 vs.

21 STATE OF CALIFORNIA; COUNTY  
22 OF SAN BERNARDINO; S.S.C., a  
nominal defendant; ISIAH KEE;  
23 MICHAEL BLACKWOOD;  
BERNARDO RUBALCAVA;  
24 ROBERT VACCARI; JAKE ADAMS;  
25 and DOES 6-10, inclusive,

26 Defendants.  
27  
28

CASE NO. 5:22-cv-00949-KK-(SHKx)

*Assigned for All Purposes to:  
Hon. Kenly K. Kato – Courtroom 3*

**COUNTY DEFENDANTS'  
SEPARATE STATEMENT OF  
UNDISPUTED MATERIAL FACTS  
IN SUPPORT OF COUNTY  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE SUMMARY  
ADJUDICATION**

*[Filed Concurrently County Defendants'  
MSJ; Exhibits and Declarations;  
Proposed Judgment]*

Date: March 20, 2025  
Time: 9:30 a.m.  
Courtroom: 1

*Trial Date: June 2, 2025*

*Complaint filed: 06/07/2022  
FAC filed: 10/18/22  
SAC filed: 01/13/23  
TAC filed: 05/12/23*

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that, Defendants COUNTY OF SAN BERNARDINO, SERGEANT ROBERT VACCARI, and DEPUTY JAKE ADAMS (collectively, “County Defendants”), pursuant to Central District Local Rule 56-1 and this Court’s Standing Order hereby submit the following Separate Statement of Uncontroverted Facts and Conclusions of Law in support of their concurrently filed motion for summary judgment, or in the alternative summary adjudication:

**STATEMENT OF UNDISPUTED MATERIAL FACTS**

**AND CONCLUSIONS OF LAW**

<b><u>Def.’s SUF No.</u></b>	<b><u>Fact</u></b>	<b><u>Supporting Evidence</u></b>
1.	Deputy Adams went to the Academy from March to September 2018.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 5:24-25.
2.	After graduation from the Academy Deputy Adams was assigned to the West Valley Detention Center for the San Bernardino County Sheriff’s Department	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:1-3.
3.	Deputy Adams was assigned to patrol starting May 2020 with the San Bernardino County Sheriff’s Department.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:6-16.
4.	From May through September 2020 Deputy Adams was in field training.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 6:6-16.
5.	Sergeant Vaccari graduated from the Academy in 1997.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 10:8-14.
6.	After graduation from the Academy	Clarke Decl. ¶ 10, Ex. U –

1		Sergeant Vaccari was assigned to	Vaccari Depo. 10:18-22.
2		West Valley Detention Center for the	
3		San Bernardino County Sheriff's	
4		Department.	
5	7.	Sergeant Vaccari went to patrol in	Clarke Decl. ¶ 10, Ex. U –
6		2000.	Vaccari Depo. 10:21-11:3.
7	8.	Sergeant Vaccari was promoted to	Clarke Decl. ¶ 10, Ex. U –
8		Sergeant in January 2012.	Vaccari Depo. 11:4-7.
9	9.	On February 16, 2021, CHP received	Clarke Decl. ¶ 11, Ex. V - Kee
10		reports that a white Ford SUV was	Depo. 14:6-9, 75:3-76:19;
11		involved in a shooting with another	Clarke Decl. ¶ 12, Ex. W -
12		vehicle on the freeway during the	Rubalcava Depo. 77:14-78:15;
13		evening.	Clarke Decl. ¶ 13, Ex. X –
14			Blackwood Depo. 51:11-20.
15	10.	The Ford SUV had a funeral sticker	Clarke Decl. ¶ 11, Ex. V -
16		on the back window.	Kee Depo. 76:14-19; Clarke
17			Decl. ¶ 12, Ex. W - Rubalcava
18			Depo. 78:4-9; Clarke Decl. ¶
19			13, Ex. X – Blackwood Depo.
20			51:11-20.
21	11.	Sergeant Kee was the on-duty	Clarke Decl. ¶ 11, Ex. V – Kee
22		supervisor when the freeway shooting	Depo. 75:22-76:5.
23		occurred.	
24	12.	Kee spoke to the victim of the	Clarke Decl. ¶ 11, Ex. V – Kee
25		freeway shooting.	Depo. 75:22-76:5
26	13.	The victim directed Kee's attention to	Clarke Decl. ¶ 11, Ex. V – Kee
27		the right passenger side door where	Depo. 75:22-76:5
28			

1		there was a bullet hole in the door	
2	14.	The bullet penetrated through the door	Clarke Decl. ¶ 11, Ex. V – Kee
3		and passenger seat.	Depo. 76:6-13
4	15.	CHP were briefed regarding the	Clarke Decl. ¶ 11, Ex. V – Kee
5		shooting.	Depo. 76:25-77:14
6	16.	The shooting was classified as a	Clarke Decl. ¶ 11, Ex. V – Kee
7		felony.	Depo. 76:25-77:14
8	17.	Because the freeway shooting was	Clarke Decl. ¶ 11, Ex. V – Kee
9		classified as a felony, the officers	Depo. 76:25-77:14
10		were permitted to conduct a felony	
11		stop.	
12	18.	A felony stop is when an officer	Clarke Decl. ¶ 11, Ex. V – Kee
13		orders the occupants out of the	Depo. 77:15-24
14		vehicle without approaching, and	
15		with the weapons drawn behind	
16		cover.	
17	19.	CHP Officers Blackwood and	Clarke Decl. ¶ 13, Ex. X -
18		Rubalcava located the vehicle and	Blackwood Depo. 51:1-10;
19		attempted a traffic stop on February	Clarke Decl. ¶ 12, Ex. W -
20		17, 2021.	Officer Rubalcava Depo.
21			23:21-24:6, 77:13-17; Clarke
22			Decl. ¶ 11, Ex. V – Kee Depo.
23			14:6-9.
24	20.	Decedent briefly yielded to the right	Clarke Decl. ¶ 12, Ex. W –
25		curb with Rubalcava and Blackwood	Rubalcava Depo. 77:13-17;
26		behind him.	Clarke Decl. ¶ 13, Ex. X –
27			Blackwood Depo. 51:1-10

21.	When they attempted to contact Puga, Puga sped away and continued the pursuit.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9
22.	The driver of the White SUV was later identified as Hector Puga.	Clarke ¶ 2, Ex. M – Third Amended Complaint (Dkt. 68) ¶ 25.
23.	Hector Puga led CHP Officers Rubalcava and Blackwood on a pursuit.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 23:21-24:6; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 51:1-10; <i>see</i> Clarke Decl. ¶ 9, Ex. K – Blackwood MVARs Fragment 01.
24.	Sergeant Kee later joined the pursuit of the white SUV.	Clarke Decl. ¶ 11, Ex. V - Kee Depo.17:14-24; 75:3-21.
25.	At some point San Bernardino County Sheriff's deputies Sergeant Vaccari and Deputy Adams joined the pursuit of Mr. Puga.	Clarke Decl. ¶ 9, Ex. T - Adams Depo. 9:12-10:13; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 18:15-19:3.
26.	CHP notified the Sheriff's Department through dispatch that there had been a shooting from the white SUV on the freeway.	Clarke ¶ 9, Ex. T – Adams Depo. 68:17-69:9; Clarke ¶ 10, Ex. U – Vaccari Depo. 18:23-19:3; Adams Decl. ¶ 5.
27.	It was relayed to Adams and Vaccari in their patrol vehicles that there had been a shooting from the white SUV on the freeway.	Clarke Decl. ¶ 9, Ex. T – Adams 68:17-69:9; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 18:23-19:3; Adams

		Decl. ¶ 5.
28.	Vaccari and Adams were given information that Puga had a gun in the car.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 32:25-33:5; Clarke Decl. ¶ 9, Ex. T – Adams Decl. ¶ 5.
29.	Due to the information that Puga had a gun in the car, Adams and Vaccari believed Puga did in fact have a firearm in the vehicle.	Clarke Decl. ¶ 10, Ex. U – Vaccari 32:25-33:9; Adams Decl. ¶ 5.
30.	During the pursuit, no one entered or exited the vehicle,	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9
31.	Because no one entered or exited the vehicle, Adams and Vaccari believed that the person involved in the shooting was still within the white SUV.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 68:17-69:9
32.	The pursuit terminated at the intersection of Peach Avenue and Catalpa Street in Hesperia, CA.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 10:14-18; Clarke Decl. ¶ 10, Ex. U – Vaccari 20:17-21
33.	The pursuit terminated because Puga’s vehicle became disabled.	Clarke ¶ 18, Ex. L – Kee MVARs p1 38-38:45
34.	The pursuit ended just south of Catalpa Street.	Clarke Decl. ¶ 11, Ex. V - Kee Depo. 16:22-24.
35.	The pursuit lasted approximately an hour.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 24:4-6

1	36.	The passenger of the vehicle complied with commands and was safely taken into custody.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:4-9
2			
3			
4	37.	Adams had a conversation with the passenger once she was out of the car.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:10-12
5			
6	38.	The passenger did not know whether Puga had a gun or not.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 13:13-25
7			
8	39.	Hector Puga refused to exit the vehicle for over an hour.	Clarke Decl. ¶ 12, Ex. W - Rubalcava Depo 27:14-19; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 24:5-11.
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11			
12	40.	Numerous repeated commands were given for Hector Puga to exit the vehicle.	Clarke Decl. ¶ 11, Ex. V - Kee 19:10-13; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 23:15-24:14
13			
14			
15			
16	41.	Puga behaved erratically and was agitated, asking to call his sister and his mom.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 54:25-55:7
17			
18			
19	42.	Puga wanted to have a cigarette.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 30:4-9
20			
21	43.	Puga was yelling and cursing.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 30:4-9
22			
23	44.	Puga was throwing miscellaneous items out of his vehicle window.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 54:25-55:7
24			
25	45.	Puga was seen twisting and turning his body while he was in his vehicle.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 16:17-17:13
26			
27	46.	Puga was reaching around in the	Clarke Decl. ¶ 9, Ex. T –
28			



1		vehicle	Adams Depo. 16:17-17:13
2	47.	Puga was leaning over in his car.	Clarke Decl. ¶ 9, Ex. T –
3			Adams Depo. 16:17-17:13
4	48.	After approximately 50 minutes of	Clarke Decl. ¶ 12, Ex. W –
5		Puga refusing to exit the vehicle,	Rubalcava Depo. 27:25-28:2,
6		Puga’s rear windshield was broken.	28:16-24; Clarke Decl. ¶ 13,
7			Ex. X – Blackwood Depo.
8			43:2-10; Clarke Decl. ¶ 11,
9			Ex. V – Kee Depo. 20:22-25;
10			Clarke Decl. ¶ 10, Ex. U –
11			Vaccari Depo. 28:22-24;
12			Adams Decl. ¶ 8, Ex. L – Kee
13			MVARs Pt. 1 at 38:48-1:4 and
14			Kee MVARs Pt. 2 1:4-1:28
15	49.	Puga’s window was broken to deploy	Clarke Decl. ¶ 12, Ex. W –
16		less lethal through it.	Rubalcava Depo. 27:25-28:2,
17			28:16-24, Clarke Decl. ¶ 13,
18			Ex. X – Blackwood Depo.
19			42:20-43:1; Clarke Decl. ¶ 11,
20			Ex. V – Kee Depo. 20:22-25;
21			Clarke Decl. ¶ 10, Ex. U –
22			Vaccari Depo. 28:22-24
23	50.	Because Puga would not exit the	Clarke Decl. ¶ 12, Ex. W –
24		vehicle despite commands, Vaccari	Rubalcava Depo. 27:25-28:4;
25		deployed pepper balls into the	Clarke Decl. ¶ 13, Ex. X –
26		vehicle.	Blackwood Depo. 42:20-43:1;
27			Clarke Decl. ¶ 11, Ex. V –



		Kee Depo. 22:1-6; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 14:22-16:2; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:1-9, 30:10-12
51.	The pepper balls were used to make the vehicle’s environment uncomfortable and force Puga to exit the vehicle	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 29:14-17; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 19:10-13; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 20:18-21; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 14:22-16:2, 18:10-19:4; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:16-23
52.	The effects of pepper balls on a person include runny nose.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4
53.	The effects of pepper balls on a person include coughing.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 18:10-18
54.	The effects of pepper balls on a person include impaired eyesight.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4
55.	The effects of pepper balls on a person include an urge to get away from the pepper balls.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 27:19-28:4
56.	Vaccari was positioned to the rear of Puga’s vehicle along the passenger side of one of the CHP units.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 30:13-16

1	57.	Vaccari was in a position of cover	Clarke Decl. ¶ 10, Ex. U –
2		behind an open door, when he	Vaccari Depo. 30:17-21
3		deployed the pepper balls.	
4	58.	Kee was talking with Puga to attempt	Clarke Decl. ¶ 10, Ex. U –
5		to get him out of the vehicle,	Vaccari Depo. 30:25-31:18
6		however.	
7	59.	When Puga did not respond to Kee’s	Clarke Decl. ¶ 10, Ex. U –
8		attempt to get him out of the vehicle,	Vaccari Depo. 30:25-31:18
9		Vaccari deployed pepper balls to	
10		attempt to get Puga to evacuate the	
11		vehicle.	
12	60.	During this period of over an hour,	Clarke Decl. ¶ 10, Ex. U –
13		Puga would say he would come out	Vaccari Depo. 31:22-32:7
14		of the vehicle but then would not exit.	
15	61.	Several times Puga opened the door	Clarke Decl. ¶ 10, Ex. U –
16		and the officers would wait for Puga	Vaccari Depo. 31:22-32:7;
17		to come out.	Clarke Decl. ¶ 9, Ex. T –
18			Adams Depo. 16:17-17:13
19	62.	Instead of Puga coming out though,	Clarke Decl. ¶ 10, Ex. U –
20		he would stay in his vehicle and close	Vaccari Depo. 31:22-32:7;
21		the door.	Clarke Decl. ¶ 9, Ex. T –
22			Adams Depo. 16:17-17:13
23	63.	As a result, more pepper balls were	Clarke Decl. ¶ 10, Ex. U –
24		deployed.	Vaccari Depo. 31:22-32:7;
25			Clarke Decl. ¶ 9, Ex. T –
26			Adams Depo. 16:17-17:13
27	64.	Vaccari estimated he deployed	Clarke Decl. ¶ 10, Ex. U –
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1		between 120-150 pepper balls.	Vaccari Depo. 31:19-21
2	65.	Kee estimated Vaccari deployed	Clarke Decl. ¶ 11, Ex. V – Kee
3		probably 100, at least 90 pepper balls.	Depo. 22:7-13
4	66.	Blackwood estimated Vaccari	Clarke Decl. ¶ 13, Ex. X –
5		deployed 100-150 pepper balls.	Blackwood Depo. 58:19-59:7
6	67.	Adams estimated Vaccari deployed	Clarke Decl. ¶ 9, Ex. T –
7		approximately 75-100 pepper balls.	Adams Depo. 15:21-16:2
8	68.	The pepper balls were deployed in the	Clarke Decl. ¶ 18, Ex. L – Kee
9		span of 26 minutes.	MVARs Pt. 2 2:05-28:48
10	69.	Sergeant Vaccari would deploy	Clarke Decl. ¶ 18, Ex. L – Kee
11		approximately a round of pepper	MVARs Pt. 2 Part 2 2:05-
12		balls.	28:48
13	70.	Then Vaccari would give Puga time	Clarke Decl. ¶ 18, Ex. L – Kee
14		to comply before deploying more	MVARs Pt. 2; Kee MVARs
15		rounds.	Part 2 2:05-28:48
16	71.	During this entire time, Vaccari gave	Clarke Decl. ¶ 18, Ex. L – Kee
17		commands to Puga to exit the car or	MVARs Pt. 2 2:05-28:48
18		more rounds would be fired.	
19	72.	While the pepper balls were being	Clarke Decl. ¶ 9, Ex. T –
20		deployed, Adams was behind Puga's	Adams Depo. 16:8-13
21		vehicle, next to a CHP vehicle that	
22		was facing northbound behind Puga's	
23		vehicle	
24	73.	Adams was behind an open passenger	Clarke Decl. ¶ 9, Ex. T –
25		side door of the CHP vehicle for	Adams Depo. 16:14-16
26		cover.	
27	74.	Puga made a statement indicating he	Clarke Decl. ¶ 13, Ex. X –
28			

1		was hurt by one of the pepper balls,	Blackwood Depo. 15:3-6;
2		or it was causing him pain.	Clarke Decl. ¶ 10, Ex. U –
3			Vaccari Depo. 32:14-18;
4			Clarke Decl. ¶ 11, Ex. V –
5			Kee Depo. 23:2-10
6	75.	Puga’s statement he was hurt by a	Clarke Decl. ¶ 10, Ex. U –
7		pepper ball caused Vaccari to stop	Vaccari Depo. 32:19-24
8		deploying pepper balls.	
9	76.	Puga eventually exited the vehicle.	Clarke Decl. ¶ 12, Ex. W –
10			Rubalcava Depo. 36:15-17;
11			Clarke Decl. ¶ 10, Ex. U –
12			Vaccari Depo. 33:10-12
13	77.	Puga exited the vehicle through his	Clarke Decl. ¶ 12, Ex. W –
14		vehicle’s driver’s side door.	Rubalcava Depo. 37:16-18
15	78.	Puga did not have a shirt on.	Clarke Decl. ¶ 11, Ex. V – Kee
16			Depo. 10:24-11:1; Clarke
17			Decl. ¶ 12, Ex. W – Rubalcava
18			Depo. 51:20-21; Clarke Decl.
19			¶ 13, Ex. X – Blackwood
20			Depo. 16:3-4
21	79.	Puga had baggy jeans.	Clarke Decl. ¶ 11, Ex. V – Kee
22			Depo. 11:4-11
23	80.	Puga was next to his driver’s side	Clarke Decl. ¶ 18, Ex. L – Kee
24		door for approximately two minutes	MVARs Pt. 2 at 40:41-42:08;
25		before moving to the front of his	Adams Decl. ¶ 9, Ex. L – Kee
26		vehicle.	MVARs Pt. 2 at 40:41-42:08
27	81.	Throughout this time period while	Clarke ¶ 13, Ex. X –
28			

	Puga was at the driver's side, Puga put his hands up several times but then would put his hands down.	Blackwood 15:10-12; Clarke ¶ 10, Ex. U – Vaccari Depo. 34:7-9; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 21:2-16
82.	While Puga was at the driver's side, Puga was given commands to keep his hands up.	Clarke Decl. ¶ 17, Ex. K – Blackwood MVARs Fragment 04 at 36:56
83.	When Puga was at the driver's side, Puga was given commands to walk back towards the officers.	Clarke Decl. ¶ 17, Ex. K – Blackwood MVARs at 36:54, 37:31; Clarke Decl. ¶ 18, Ex. L – Kee MVARs Pt 2 41:14-41:52
84.	Puga would not keep his hands up for an extended period of time.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 15:10-12; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 34:7-9; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 21:2-16
85.	Rubalcava was behind his driver's side door under cover when Puga exited the vehicle.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 37:21-22
86.	Adams was close to a CHP vehicle with cover when Puga exited the vehicle.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 20:6-14
87.	Vaccari was behind the trunk of the CHP vehicle behind Puga's car.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 33:16-34:1
88.	Puga was given multiple commands	Clarke Decl. ¶ 9, Ex. T –

1		while he was next to his driver's side	Adams Depo. 21:10-12,
2		that he ignored.	32:18-25
3	89.	The multiple commands included	Clarke Decl. ¶ 9, Ex. T –
4		getting on the ground and keeping his	Adams Depo. 21:10-12,
5		hands raised.	32:18-25
6	90.	Rubalcava did not see Puga had a	Clarke Decl. ¶ 12, Ex. W –
7		firearm while he was on the driver's	Rubalcava Depo. 38:5-16,
8		side of his vehicle.	77:8-10
9	91.	Kee did not see Puga had a firearm	Clarke Decl. ¶ 11, Ex. V – Kee
10		while he was on the driver's side of	Depo. 24:4-17
11		his vehicle.	
12	92.	Blackwood did not see Puga had a	Clarke Decl. ¶ 13, Ex. X –
13		firearm while he was on the driver's	Blackwood Depo. 33:25-34:6
14		side of his vehicle.	
15	93.	Adams did not see Puga had a firearm	Clarke Decl. ¶ 9, Ex. T –
16		while he was on the driver's side of	Adams Depo 21:22-24
17		his vehicle.	
18	94.	Vaccari did not know whether Puga	Clarke Decl. ¶ 10, Ex. U –
19		had a firearm on him when he exited	Vaccari Depo. 33:13-34:6
20		the driver's side.	
21	95.	After a few minutes of being on the	Clarke Decl. ¶ 12, Ex. W –
22		driver's side of his vehicle, Puga ran	Rubalcava Depo. 39:18-23;
23		to the front of his vehicle in front of	Clarke Decl. ¶ 9, Ex. T –
24		his vehicle's hood.	Adams Depo. 22:13-15;
25			Clarke Decl. ¶ 13, Ex. X –
26			Blackwood Depo.15:13-15;
27			Clarke Decl. ¶ 10, Ex. U –
28			

		Vaccari Depo. 35:8-10
96.	Puga faced south towards his own vehicle.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 43:21-24: Clarke Decl. ¶ 9, Ex. T – Adams Depo. 40:16-22; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 13:7-10
97.	Puga was near the middle of the hood but slightly closer to the driver’s side.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 43:21-24: Clarke Decl. ¶ 9, Ex. T – Adams Depo. 40:16-22; Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 13:7-10
98.	The front of Puga’s vehicle was blocking the view of Puga’s midsection down to his feet.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 41:2-9; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 63:23-64:3
99.	Kee gave Puga commands to keep his hands where they could see them.	Clarke Decl. ¶ 11, Ex. V – Kee Depo. 59:23-60:3
100.	The officers were unable to get Puga to comply and surrender.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 53:12-17
101.	The officers and deputies were unable to see Puga’s waistband where Puga was positioned.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 53:12-17
102.	Puga had been at the front of his vehicle for several minutes before law enforcement approached.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 42:18-21; Clarke Decl. ¶ 10, Ex. U –



		Vaccari Depo. 46:2-6
103.	A helicopter was initially present and using its spotlights throughout the pursuit	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 37:6-7; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 12:3-13
104.	By the time the officers approached and the shooting began, the helicopter was not present.	Clarke Decl. ¶ 11, Ex. V – Kee Depo. 46:20-23; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 87:19-23
105.	It was dark where Puga was standing.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 11:20-21; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 46:20-23
106.	Kee and Rubalcava were to the left of the patrol vehicle to the southwest dirt area.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 18:11-21
107.	Kee and Rubalcava were approaching to the left-front corner of Puga’s vehicle on the west side.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 41:5-7; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 37:5-11
108.	While they were approaching, Kee told Puga to put his hands up to where they can see them.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 42:2-6
109.	Commands were consistently given for Puga to keep his hands up.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 32:5-10
110.	Adams and Vaccari approached by crossing between Puga’s and CHP’s	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 29:7-14

1		vehicles.	
2	111.	Adams and Vaccari moved eastward	Clarke Decl. ¶ 9, Ex. T –
3		to gain a better view of Puga.	Adams Depo. 29:7-14
4	112.	Adams and Vaccari approached on	Clarke Decl. ¶ 9, Ex. T –
5		the passenger side of Puga’s vehicle.	Adams Depo. 26:17-20;
6			Clarke Decl. ¶ 13, Ex. X –
7			Blackwood Depo. 18:11-21;
8			Clarke Decl. ¶ 10, Ex. U –
9			Vaccari Depo. 46:2-6
10	113.	Adams was in front of Vaccari.	Clarke Decl. ¶ 9, Ex. T –
11			Adams Depo. 27:8-14
12	114.	Adams had his Glock 17, 9mm	Clarke Decl. ¶ 9, Ex. T –
13		drawn.	Adams Depo. 31:24-32:4
14	115.	The CHP officers were approaching	Clarke Decl. ¶ 9, Ex. T –
15		Puga at a similar pace, just on the	Adams Depo. 27:15-21
16		other side of Puga’s vehicle.	
17	116.	There was no discussion between	Clarke Decl. ¶ 9, Ex. T –
18		CHP and the Sheriff’s Department	Adams Depo. 28:3-19; Clarke
19		about how to approach Puga when he	Decl. ¶ 10, Ex. U – Vaccari
20		was in front of his vehicle.	Depo. 36:16-25
21	117.	CHP discussed amongst themselves	Clarke Decl. ¶ 12, Ex. W –
22		that Rubalcava and Kee would	Rubalcava Depo. 30:13-18
23		approach Puga and handcuff him.	
24	118.	Adams and Vaccari formulated a plan	Clarke Decl. ¶ 9, Ex. T –
25		to move to the east side of Puga’s	Adams Depo. 25:12-22;
26		vehicle when they could no longer	Clarke Decl. ¶ 10, Ex. U –
27		see Puga’s hands when he was at the	Vaccari Depo. 39:6-20
28			

1		front of his vehicle.	
2	119.	The extent of Adams' and Vaccari's	Clarke Decl. ¶ 9, Ex. T –
3		plan was to merely gain a better view	Adams Depo. 25:12-22;
4		of Puga.	Clarke Decl. ¶ 10, Ex. U –
5			Vaccari Depo. 39:6-20
6	120.	Adams and Vaccari used Puga's	Clarke Decl. ¶ 10, Ex. U –
7		vehicle passenger side as cover.	Vaccari Depo. 40:21-25
8	121.	Adams and Vaccari determined that	Clarke Decl. ¶ 10, Ex. U –
9		upon approach, Vaccari would arm	Vaccari Depo. 40:1-16; Clarke
10		himself with the less lethal launcher.	Decl. ¶ 9, Ex. T – Adams
11			Depo. 25:23-26:4
12	122.	Vaccari was armed with the less lethal	Clarke Decl. ¶ 10, Ex. U –
13		launcher to have a less lethal option	Vaccari 40:1-16; Clarke Decl.
14		available.	¶ 9, Ex. T – Adams Depo.
15			25:23-26:4
16	123.	Adams and Vaccari determined that	Clarke Decl. ¶ 9, Ex. T –
17		upon approach, Adams would be	Adams Depo. 31:18-32:2
18		armed with his firearm.	
19	124.	Adams was armed with the firearm in	Clarke Decl. ¶ 9, Ex. T –
20		the event deadly force was needed.	Adams Depo. 31:24-32:4
21	125.	As Adams and Vaccari approached on	Jason Decl. ¶¶ 14-15, Ex. D
22		the passenger side, Puga's hands were	and E; Adams Decl. ¶ 6, Ex. J
23		overhead.	– Mangerino Video
24	126.	Vaccari remained with his 40mm less-	Clarke Decl. ¶ 10, Ex. U –
25		lethal shotgun targeting Puga.	Vaccari Depo. 50:25-51:10
26	127.	As Adams and Vaccari approached,	Clarke Decl. ¶ 12, Ex. W –
27		Adams saw Puga's arms lower from	Rubalcava Depo. 44:6-8;
28			

1		overhead to his waistband.	Clarke Decl. ¶ 10, Ex. U –
2			Vaccari Depo. 64:4-7; Clarke
3			Decl. ¶ 9, Ex. T – Adams
4			36:2-11; Jason Decl. ¶ 14 –
5			Ex. D, ¶ 16 – Ex. F, ¶ 19 – Ex.
6			I
7	128.	As the officers were approaching,	Clarke Decl. ¶ 12, Ex. W –
8		Puga lowered his hands.	Rubalcava Depo. 44:6-8;
9			Clarke Decl. ¶ 10, Ex. U –
10			Vaccari Depo. 64:4-7; Jason
11			Decl. ¶ 14 – Ex. D, ¶ 16 – Ex.
12			F, ¶ 19 – Ex. I
13	129.	Adams and Vaccari were on the	Clarke Decl. ¶ 10, Ex. U –
14		passenger side of Puga’s vehicle on	Vaccari Depo. 41:1-13
15		the dirt shoulder when they first heard	
16		shots.	
17	130.	Adams saw Puga’s hands dive into his	Clarke Decl. ¶ 9, Ex. T –
18		waistband area and withdraw a gun.	Adams Depo. 36:2-11; Jason
19			Decl. ¶ 16 – Ex. F, ¶ 17 – Ex.
20			G, ¶ 19 – Ex. I
21	131.	Adams heard shots from what he	Clarke Decl. ¶ 9, Ex. T –
22		believed was the firearm Puga had	Adams Depo. 46:23-47:4;
23		drawn.	49:2-10
24	132.	Adams believed the shots he heard	Clarke Decl. ¶ 9, Ex. T –
25		were from Puga firing at him from	Adams Depo. 46:23-47:4;
26		the gun that he had drawn.	47:10-14; 49:2-10
27	133.	Adams fired upon Puga.	Clarke Decl. ¶ 9, Ex. T –
28			

		Adams Depo. 36:2-11
134.	Vaccari was slightly behind Adams.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:4-11
135.	Vaccari had the same view of Puga as Adams.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 27:12-14; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 41:1-8
136.	Vaccari observed Puga pull a firearm.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 64:4-12
137.	Vaccari heard gunshots.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 40:21-41:5
138.	Vaccari did not fire his firearm.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 42:17-21, 50:22-51:10
139.	Vaccari was unsure if the less lethal made contact with Puga.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 52:1-6
140.	Within seconds of the first shot being fired, Puga turned to run in a northwest direction.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 21:16-20; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 48:13-18, 51:3-6; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 42:7-9; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 50:11-14
141.	Puga had a gun when he was running.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 83:10-19; Clarke Decl. ¶ 11, Ex. V –

		Kee Depo. 65:25-66:4; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-11; Jason Decl. ¶ 17 – Ex. G, ¶ 18 – Ex. H
142.	Puga did not drop his while he ran.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 83:10-19, 85:13-16; Clarke Decl. ¶ 11, Ex. V – Kee Depo. 65:25-67:4; Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-11; Jason Decl. ¶ 17 – Ex. G, ¶ 18 – Ex. H
143.	Puga did not make any gestures that he was surrendering.	Clarke Decl. ¶ 12, Ex. W – Rubalcava 85:17-19
144.	While Puga was running, he turned back towards the officers with his firearm in his hand.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 38:8-11
145.	Puga fell down in the dirt shoulder, chest-down.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 38:11-24; Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 57:6-8; Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 43:11-13, 54:1-2
146.	Once Puga was no longer a threat, Adams ceased firing his weapon.	Clarke Decl. ¶ 9, Ex. T – Adams Depo. 51:25-52:4
147.	Because Puga had a gun in his hands	Clarke Decl. ¶ 12, Ex. W –

1		and he was running towards a	Rubalcava Depo. 86:23-87:8
2		residential area where he could hold	
3		people hostage after he was involved	
4		in the shooting, he was considered a	
5		threat.	
6	148.	Puga running still armed was able to	Clarke Decl. ¶ 16, Ex. AA –
7		turn around and fire within less than	Jason Rebuttal Report pgs. 2-3
8		one half second.	
9	149.	Puga running still armed could point	Clarke Decl. ¶ 16, Ex. AA –
10		the handgun over his shoulder and	Jason Rebuttal Report pgs. 2-3
11		fired backwards.	
12	150.	Puga running still armed could point	Clarke Decl. ¶ 16, Ex. AA –
13		the handgun around his torso and fire	Jason Rebuttal Report pgs. 2-3
14		backwards.	
15	151.	Puga was still breathing when the	Clarke Decl. ¶ 12, Ex. W –
16		officers approached.	Rubalcava Depo. 57:6-8;
17			Clarke Decl. ¶ 9, Ex. T –
18			Adams Depo. 55:23-56:9;
19			Clarke Decl. ¶ 10, Ex. U –
20			Vaccari Depo. 54:6-9
21	152.	The officers still did not see where	Clarke Decl. ¶ 12, Ex. W –
22		Puga’s gun went because he did not	Rubalcava Depo. 86:2-4;
23		drop it while he was running.	Clarke Decl. ¶ 9, Ex. T –
24			Adams Depo. 52:18-22;
25			Clarke Decl. ¶ 11, Ex. V – Kee
26			Depo. 85:1-4
27	153.	Puga had fallen on his hands in a	Clarke Decl. ¶ 9, Ex. T –
28			



1		prone position.	Adams Depo. 56:12-21
2	154.	Officers continued to give verbal	Clarke Decl. ¶ 9, Ex. T –
3		commands to Puga to gain	Adams Depo. 56:12-21
4		compliance.	
5	155.	Vaccari deployed the taser twice in	Clarke Decl. ¶ 9, Ex. T –
6		case there was another element of	Adams Depo. 56:22-57:15
7		force or a threat posed by Puga.	
8	156.	The taser made Puga’s body lock	Clarke Decl. ¶ 9, Ex. T –
9		twice, indicative the taser was having	Adams Depo. 57:23-58:10;
10		an effect on Puga.	Clarke Decl. ¶ 10, Ex. U –
11			Vaccari Depo. 55:1-17, 56:20-
12			22
13	157.	Puga was then handcuffed by	Clarke Decl. ¶ 12, Ex. W –
14		Rubalcava.	Rubalcava Depo. 58:6-7,
15			Clarke Decl. ¶ 13, Ex. X –
16			Blackwood Depo. 26:15-18;
17			Clarke Decl. ¶ 10, Ex. U –
18			Vaccari Depo. 56:23-25;
19			Clarke Decl. ¶ 9, Ex. T –
20			Adams Depo. 58:20-23
21	158.	Puga was then rolled over.	Clarke Decl. ¶ 12, Ex. W –
22			Rubalcava Depo. 58:8-9
23	159.	Puga’s firearm was found under Puga.	Clarke Decl. ¶ 11, Ex. V – Kee
24			Depo. 89:22-90:1
25	160.	Puga’s firearm had a shiny slide on	Clarke Decl. ¶ 11, Ex. V – Kee
26		the top of it.	Depo. 89:22-90:1, Jason Decl.
27			¶ 18, Ex. H

1	161.	The gun was tucked under his	Clarke Decl. ¶ 12, Ex. W –
2		stomach.	Rubalcava Depo. 86:10-16
3	162.	His arms were underneath him.	Clarke Decl. ¶ 13, Ex. X –
4			Blackwood Depo. 47:9-13
5	163.	The pistol that was found underneath	Haag ¶¶ 19-20; Clarke Decl. ¶
6		Puga was a PMF (Personally	11, Ex. V – Kee Depo. 89:22-
7		Manufactured Firearm) or “ghost	90:1
8		gun.”	
9	164.	The pistol next to Puga had a partially	Haag Decl. ¶ 20
10		removed magazine.	
11	165.	A fired 9m cartridge was found next	Haag ¶ 19
12		to the pistol.	
13	166.	The autopsy of Puga revealed he had	Clarke Decl. ¶ 14, Ex. Y –
14		10 gunshot wounds.	Jong Depo. 21:19-20
15	167.	Puga’s cause of death was identified	Clarke Decl. ¶ 14, Ex. Y –
16		as being the gunshot wound to the	Jong Depo. 7:1-5; 9:2-11:14
17		mid-left back.	
18	168.	The bullet that caused the death	Clarke Decl. ¶ 14, Ex. Y –
19		entered through the mid-left back	Jong Depo. 9:2-4
20	169.	The bullet travelled through skin and	Clarke Decl. ¶ 14, Ex. Y –
21		soft tissue, ultimately getting lodged	Jong Depo. 9:22-10:6
22		in soft tissue of the left upper chest.	
23	170.	The bullet then travelled through the	Clarke Decl. ¶ 14, Ex. Y –
24		rib cage.	Jong Depo. 9:22-10:6
25	171.	The bullet then travelled pierced the	Clarke Decl. ¶ 14, Ex. Y –
26		left lung.	Jong Depo. 9:22-10:6
27	172.	The bullet then travelled through the	Clarke Decl. ¶ 14, Ex. Y –
28			

1		front part of the rib cage.	Jong Depo. 9:22-10:6
2	173.	The bullet ultimately got lodged in	Clarke Decl. ¶ 14, Ex. Y –
3		soft tissue of the left upper chest.	Jong Depo. 9:22-10:6
4	174.	This bullet travelled back to front,	Clarke Decl. ¶ 14, Ex. Y –
5		angled left to right, and upward.	Jong Depo. 10:25-11:2
6	175.	This mid-back bullet was fatal.	Clarke Decl. ¶ 14, Ex. Y –
7			Jong Depo. 11:13-14
8	176.	The mid-back bullet was fatal because	Clarke Decl. ¶ 14, Ex. Y –
9		it went through the lung and created a	Jong Depo. 11:13-21, 21:23-
10		defect wherein air could not move	24:3
11		into the chest cavity.	
12	177.	Additionally, when the bullet hit the	Clarke Decl. ¶ 14, Ex. Y –
13		lung, blood went into the chest cavity	Jong Depo. 11:13-21, 21:23-
14		which compressed the lung and	24:3
15		created difficulty for the body to	
16		oxygenate blood.	
17	178.	The bullet identified by the coroner as	Haag ¶ 14
18		being the fatal shot was removed	
19		from the chest cavity.	
20	179.	The removed bullet from the fatal	Haag ¶ 14
21		shot was a fully expanded 5.56 mm	
22		(.223 caliber) rifle bullet.	
23	180.	Only Sergeant Kee and Officer	Haag ¶ 11
24		Blackwood were armed with firearms	
25		that deployed .223 caliber rifle	
26		bullets.	
27	181.	Because only Kee and Blackwood had	Haag ¶ 14
28			

1		.223 caliber rifle bullets, the fatal	
2		wound that caused Puga's death was	
3		fired by either Kee or Blackwood.	
4	182.	Deputy Adams is therefore excluded	Haag ¶ 15
5		as having caused the fatal injury.	
6	183.	Deputy Adams firearm used 9mm	Clarke Decl. ¶ 9, Ex. T –
7		ammunition.	Adams Depo. 31:18-32:2;
8			Haag Decl. ¶ 11
9	184.	Only two 9mm bullets were	Haag ¶ 16
10		recovered from Puga during the	
11		autopsy.	
12	185.	The 9mm bullets were associated with	Haag ¶ 16
13		gunshot wounds to the right flank and	
14		left thigh.	
15	186.	The wounds to the right flank and left	Haag ¶ 16
16		thigh were identified as non-fatal per	
17		the coroner.	
18	187.	These bullets both ricocheted before	Haag ¶ 17
19		striking Puga.	
20	188.	Because of the general upward flight	Haag ¶ 18
21		path of ricocheted bullets and general	
22		wound path, these wounds were	
23		sustained prior to Puga falling to the	
24		ground.	
25	189.	Maria Cadena is the mother to minor	Clarke Decl. ¶ 15, Ex. Z –
26		L.C.	Cadena Depo 11:23-12:20
27	190.	Cadena testified that Cadena and	Clarke Decl. ¶ 15, Ex. Z –
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1		Hector Puga were not in a relationship	Cadena Depo. 12:21-13:2,
2		by the time Plaintiff L.C. was born.	25:17-19
3	191.	L.C. was born in 2013.	Clarke Decl. ¶ 15, Ex. Z –
4			Cadena Depo. 12:19-20
5	192.	Puga was not listed as the father on	Clarke Decl. ¶ 15, Ex. Z –
6		L.C.'s birth certificate.	Cadena Depo. 34:16-21
7	193.	Puga was not listed on L.C.'s birth	Clarke Decl. ¶ 15, Ex. Z –
8		certificate because Puga did not want	Cadena Depo. 34:19-35:1
9		to be responsible for L.C.	
10	194.	Puga did not have an issue with	Clarke Decl. ¶ 15, Ex. Z –
11		another person being listed on the	Cadena Depo. 34:19-35:1,
12		certificate as the father.	37:24-38:2
13	195.	Cadena never let Puga see Plaintiff	Clarke Decl. ¶ 15, Ex. Z –
14		L.C.	Cadena Depo. 26:6-10
15	196.	Cadena did not get along with Puga	Clarke Decl. ¶ 15, Ex. Z –
16			Cadena Depo. 27:14-17
17	197.	She was concerned about his drinking	Clarke Decl. ¶ 15, Ex. Z –
18		if he were to be around L.C.	Cadena Depo. 27:21-23
19	198.	Cadena was also concerned about his	Clarke Decl. ¶ 15, Ex. Z –
20		verbally abusive behavior.	Cadena Depo. 35:16-23
21	199.	Throughout L.C.'s life up to the	Clarke Decl. ¶ 15, Ex. Z –
22		incident, Puga only spoke to L.C.	Cadena Depo. 28:21-24
23		about 3 times.	
24	200.	L.C. never received anything from	Clarke Decl. ¶ 15, Ex. Z –
25		Puga.	Cadena Depo. 38:13-16
26	201.	There were no plans for L.C. to see	Clarke Decl. ¶ 15, Ex. Z –
27		Puga in the future prior to Puga dying.	Cadena Depo. 29:6-8
28			

1	202.	The Estate of Hector Javier Puga	Clarke Decl. ¶ 4, Ex. O –
2		submitted his tort claim to the County	Estate of Puga Tort Claim
3		of San Bernardino on November 23,	
4		2021.	
5	203.	Antonia Salas Ubaldo submitted her	Clarke Decl. ¶ 5, Ex. P –
6		tort claim to the County of San	Ubaldo Tort Claim
7		Bernardino on November 23, 2021.	
8	204.	I.H. submitted the tort claim to the	Clarke Decl. ¶ 6, Ex. Q – I.H.
9		County of San Bernardino on	Tort Claim
10		November 23, 2021.	
11	205.	A.L. submitted the tort claim to the	Clarke Decl. ¶ 7, Ex. R – A.L.
12		County of San Bernardino on	Tort Claim
13		November 23, 2021.	
14	206.	L.C. submitted the tort claim to the	Clarke Decl. ¶ 8, Ex. S – L.C.
15		County of San Bernardino on	Tort Claim
16		November 23, 2021.	
17	207.	The tort claim from the Estate of	Clarke Decl. ¶ 4, Ex. O –
18		Hector Javier Puga alleges on	Estate of Puga Tort Claim
19		“February 17, 2021, at approximately	
20		1:42 a.m., California Highway Patrol	
21		officers and County of San	
22		Bernardino sheriff’s deputies	
23		encountered Mr. Puga on a street in	
24		Hesperia, California. In a populated,	
25		residential area, officers and deputies	
26		fired approximately 31 shots at Mr.	
27		Puga, thereby using excessive force	

1	against him. The shots struck three	
2	innocent bystanders and fatally	
3	wounded Mr. Puga. At the time of	
4	the shooting and other undiscovered	
5	uses of force, Mr. Puga did not pose	
6	an immediate threat of death or	
7	serious bodily injury to any person.	
8	After the shooting, the involved	
9	officers and deputies failed to timely	
10	summon medical attention for or	
11	provide medical aid to Mr. Puga,	
12	thereby further contributing to the	
13	injuries and death. As a result of the	
14	shooting and other uses of force, Mr.	
15	Puga endured severe pain and	
16	suffering, and lost his life and earning	
17	capacity. At all relevant times, the	
18	involved officers and deputies were	
19	acting under color of state law and in	
20	the course and scope of their	
21	employment with the State of	
22	California and County of San	
23	Bernardino, respectively.”	
24	208. The tort claim from Antonia Salas	Clarke Decl. ¶ 5, Ex. P –
25	Ubaldo alleges on “February 17,	Ubaldo Tort Claim
26	2021, at approximately 1:42 a.m.,	
27	California Highway Patrol officers	



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and County of San Bernardino sheriff's deputies encountered Mr. Puga on a street in Hesperia, California. In a populated, residential area, officers and deputies fired approximately 31 shots at Mr. Puga, thereby using excessive force against him. The shots struck three innocent bystanders and fatally wounded Mr. Puga. At the time of the shooting and other undiscovered uses of force, Mr. Puga did not pose an immediate threat of death or serious bodily injury to any person. After the shooting, the involved officers and deputies failed to timely summon medical attention for or provide medical aid to Mr. Puga, thereby further contributing to the injuries and death. As a result of the shooting and other uses of force, Mr. Puga endured severe pain and suffering, and lost his life and earning capacity. At all relevant times, the involved officers and deputies were acting under color of state law and in the course and scope of their employment with the State of	
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1		California and County of San	
2		Bernardino, respectively.”	
3	209.	The tort claim from I.H. alleges on	Clarke Decl. ¶ 6, Ex. Q – I.H.
4		“February 17, 2021, at approximately	Tort Claim
5		1:42 a.m., California Highway Patrol	
6		officers and County of San	
7		Bernardino sheriff’s deputies	
8		encountered Mr. Puga on a street in	
9		Hesperia, California. In a populated,	
10		residential area, officers and deputies	
11		fired approximately 31 shots at Mr.	
12		Puga, thereby using excessive force	
13		against him. The shots struck three	
14		innocent bystanders and fatally	
15		wounded Mr. Puga. At the time of	
16		the shooting and other undiscovered	
17		uses of force, Mr. Puga did not pose	
18		an immediate threat of death or	
19		serious bodily injury to any person.	
20		After the shooting, the involved	
21		officers and deputies failed to timely	
22		summon medical attention for or	
23		provide medical aid to Mr. Puga,	
24		thereby further contributing to the	
25		injuries and death. As a result of the	
26		shooting and other uses of force, Mr.	
27		Puga endured severe pain and	

1		suffering, and lost his life and earning	
2		capacity. At all relevant times, the	
3		involved officers and deputies were	
4		acting under color of state law and in	
5		the course and scope of their	
6		employment with the State of	
7		California and County of San	
8		Bernardino, respectively.”	
9	210.	The tort claim from A.L. alleges on	Clarke Decl. ¶ 7, Ex. R – A.L.
10		“February 17, 2021, at approximately	Tort Claim
11		1:42 a.m., California Highway Patrol	
12		officers and County of San	
13		Bernardino sheriff’s deputies	
14		encountered Mr. Puga on a street in	
15		Hesperia, California. In a populated,	
16		residential area, officers and deputies	
17		fired approximately 31 shots at Mr.	
18		Puga, thereby using excessive force	
19		against him. The shots struck three	
20		innocent bystanders and fatally	
21		wounded Mr. Puga. At the time of	
22		the shooting and other undiscovered	
23		uses of force, Mr. Puga did not pose	
24		an immediate threat of death or	
25		serious bodily injury to any person.	
26		After the shooting, the involved	
27		officers and deputies failed to timely	

1	summon medical attention for or	
2	provide medical aid to Mr. Puga,	
3	thereby further contributing to the	
4	injuries and death. As a result of the	
5	shooting and other uses of force, Mr.	
6	Puga endured severe pain and	
7	suffering, and lost his life and earning	
8	capacity. At all relevant times, the	
9	involved officers and deputies were	
10	acting under color of state law and in	
11	the course and scope of their	
12	employment with the State of	
13	California and County of San	
14	Bernardino, respectively.”	
15	211. The tort claim from L.C. alleges on	Clarke Decl. ¶ 8, Ex. S – L.C.
16	“February 17, 2021, at approximately	Tort Claim
17	1:42 a.m., California Highway Patrol	
18	officers and County of San	
19	Bernardino sheriff’s deputies	
20	encountered Mr. Puga on a street in	
21	Hesperia, California. In a populated,	
22	residential area, officers and deputies	
23	fired approximately 31 shots at Mr.	
24	Puga, thereby using excessive force	
25	against him. The shots struck three	
26	innocent bystanders and fatally	
27	wounded Mr. Puga. At the time of	

1		the shooting and other undiscovered	
2		uses of force, Mr. Puga did not pose	
3		an immediate threat of death or	
4		serious bodily injury to any person.	
5		After the shooting, the involved	
6		officers and deputies failed to timely	
7		summon medical attention for or	
8		provide medical aid to Mr. Puga,	
9		thereby further contributing to the	
10		injuries and death. As a result of the	
11		shooting and other uses of force, Mr.	
12		Puga endured severe pain and	
13		suffering, and lost his life and earning	
14		capacity. At all relevant times, the	
15		involved officers and deputies were	
16		acting under color of state law and in	
17		the course and scope of their	
18		employment with the State of	
19		California and County of San	
20		Bernardino, respectively.”	
21	212.	Pepper balls are not mentioned in any	See Clarke Decl. ¶ 4, Ex. O –
22		of the tort claims.	Estate of Puga Tort Claim;
23			Clarke Decl. ¶ 5, Ex. P –
24			Ubaldo Tort Claim; Clarke
25			Decl. ¶ 6, Ex. Q – I.H. Tort
26			Claim; Clarke Decl. ¶ 7, Ex. R
27			– A.L. Tort Claim; Clarke

		Decl. ¶ 8, Ex. S – L.C. Tort Claim
213.	Tasers are not mentioned in any of the tort claims.	See Clarke Decl. ¶ 4, Ex. O – Estate of Puga Tort Claim; Clarke Decl. ¶ 5, Ex. P – Ubaldo Tort Claim; Clarke Decl. ¶ 6, Ex. Q – I.H. Tort Claim; Clarke Decl. ¶ 7, Ex. R – A.L. Tort Claim; Clarke Decl. ¶ 8, Ex. S – L.C. Tort Claim
214.	Neighbor Tammy Goodson saw Puga withdraw a gun from his waistband.	Clarke ¶ 19, Ex. BB – Goodson Depo. 26:10-17
215.	Neighbor Edward Mengerino testified he saw smoke coming from Puga’s hand giving him the impression Puga had a gun.	Clarke ¶ 20, Ex. CC – Edward Mangerino Depo. 35:2-36:3
216.	Sergeant Kee saw Puga withdraw the firearm.	Clarke Decl. ¶ 11, Ex. V Kee Depo. 82:14-24;
217.	Sergeant Vaccari saw Puga withdraw the firearm.	Clarke Decl. ¶ 10, Ex. U – Vaccari Depo. 64:4-12
218.	Officer Rubalcava saw Puga withdraw a firearm.	Clarke Decl. ¶ 12, Ex. W – Rubalcava Depo. 79:11-13
219.	Officer Blackwood saw Puga had a firearm in his hand.	Clarke Decl. ¶ 13, Ex. X – Blackwood Depo. 53:14-16
220.	Plaintiffs never set forth any claims about the use of pepper balls and/or	Clarke Decl. ¶ 2, Ex. M - TAC

1		tasers nor did they set forth that any	
2		pre-shooting tactics were the basis of	
3		their claims.	
4	221.	Plaintiffs state in ¶ 47 of the TAC	Clarke ¶ 2, Ex. M – TAC (Dkt.
5		“On information and belief,	68)
6		DECEDENT did not pose an	
7		immediate threat of serious bodily	
8		injury or death to anyone at the time	
9		of the shooting. OFFICER	
10		DEFENDANTS and DEPUTY	
11		DEFENDANTS were not faced with	
12		an immediate or imminent defense of	
13		life situation and had less than lethal	
14		alternatives available to subdue	
15		DECEDENT and to take	
16		DECEDENT into custody.”	
17	222.	Plaintiffs state in ¶ 106 of the TAC	Clarke ¶ 2, Ex. M – TAC (Dkt.
18		“Police officers, including	68)
19		Defendants, have a duty to use	
20		reasonable care to prevent harm or	
21		injury to others. This duty includes	
22		using appropriate tactics, giving	
23		appropriate commands, giving	
24		warnings, and not using any force	
25		unless necessary, using less than	
26		lethal options, and only using deadly	
27		force as a last resort.”	



223.	The TAC sets forth that deputies should have utilized less lethal alternatives to take Puga into custody.	Clarke ¶ 2, Ex. M – TAC ¶¶ 47, 106 (Dkt. 68).
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## CONCLUSIONS OF LAW

### I. EXCESSIVE FORCE

In general, all claims of excessive force, whether deadly or not, should be analyzed under the objective reasonableness standard of the Fourth Amendment as set forth in *Lombardo v. City of St. Louis*, 594 U.S. 464, 467 (2021), *County of Los Angeles v. Mendez*, 581 U.S. 420, 428 (2017), *Scott v. Harris*, 550 U.S. 372, 381-85 (2007), *Graham v. Connor*, 490 U.S. 386, 397 (1989), and *Tennessee v. Garner*, 471 U.S. 1, 7-12 (1985). The objective reasonableness of such conduct is assessed by balancing the nature and quality of the intrusion on Fourth Amendment rights against the government’s countervailing interest in the force used. *Estate of Aguirre v. County of Riverside*, 29 F.4th 624, 628 (9th Cir. 2022) quoting *Graham*, 490 U.S. at 396; see *Mendez*, 581 U.S. at 427 (“[D]etermining whether the force used to effect a particular seizure is reasonable requires balancing of the individual’s Fourth Amendment interests against the relevant government interests.” (internal quotation marks omitted) (quoting *Graham*, 490 U.S. at 396)).

In assessing “whether an officer’s actions were objectively reasonable, we consider: ‘(1) the severity of the intrusion on the individual’s Fourth Amendment rights by evaluating the type and amount of force inflicted, (2) the government’s interest in the use of force, and (3) the balance between the gravity of the intrusion on the individual and the government’s need for that intrusion.’” *Williamson v. City of Nat’l City*, 23 F.4th 1146, 1151 (9th Cir. 2022) (quoting *Rice v. Morehouse*, 989 F.3d 1112, 1121 (9th Cir. 2021)). “Our analysis must make ‘allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is

1 necessary in a particular situation.” *Williamson*, 23 F.4th at 1151. “The  
2 ‘reasonableness’ of a particular use of force must be judged from the perspective of a  
3 reasonable officer on the scene, rather than with the 20/20 vision of  
4 hindsight.” *Graham*, 490 U.S. at 396; *see Kingsley v. Hendrickson*, 576 U.S. 389,  
5 397 (2015) (“A court must make this determination from the perspective of a  
6 reasonable officer on the scene, including what the officer knew at the time, not with  
7 the 20/20 vision of hindsight.”); *see also Demarest v. City of Vallejo*, 44 F.4th 1209,  
8 1226 (9th Cir. 2022) (“[A]n ‘officer’s use of force cannot be deemed excessive based  
9 on facts that he [or she] reasonably would not have known or anticipated.”). Further,  
10 the “analysis is not static, and the reasonableness of force may change as the  
11 circumstances evolve.” *Hyde v. City of Willcox*, 23 F.4th 863, 870 (9th Cir. 2022); *see*  
12 *also Andrews v. City of Henderson*, 35 F.4th 710, 715 (9th Cir. 2022) (“The  
13 detectives’ interest in using significant force against Andrews is undermined by their  
14 knowledge that he was unarmed; his lack of any aggressive, threatening, or evasive  
15 behavior; and the detectives’ failure to provide any prior warning or consider less  
16 intrusive alternatives before forcibly tackling him to the ground.”). An officer’s  
17 subjective intent or motivation is not relevant to the reasonableness inquiry. *See*  
18 *Graham*, 490 U.S. at 397; *Shafer v. County of Santa Barbara*, 868 F.3d 1110, 1116  
19 (9th Cir. 2017).

20 In assessing the governmental interest in the use of force, the jury should  
21 consider the three non-exclusive factors set forth by the Supreme Court in *Graham v.*  
22 *Connor*. *See Williamson*, 23 F.4th at 1153. The three *Graham* factors are: (1) the  
23 severity of the crime at issue; (2) whether the individual posed an immediate threat to  
24 the safety of the officers or others; and (3) whether the individual was actively  
25 resisting arrest or attempting to evade arrest by flight. *Graham*, 490 U.S. at  
26 396; *Seidner v. de Vries*, 39 F.4th 591, 599 (9th Cir. 2022); *see also Estate of Aguirre*,  
27 29 F.4th at 628 (describing the second *Graham* factor as “the level of immediate

1 threat [the individual] posed to the officer or others”). The Ninth Circuit has  
2 repeatedly emphasized that “the most important *Graham* factor” is whether the  
3 individual posed an immediate threat to the safety of the officers or others. *Bernal v.*  
4 *Sacramento Cnty. Sheriff’s Dep’t*, 73 F.4th 678, 692 (9th Cir. 2023) (characterizing  
5 the threat to the officer as “minimal and quickly mitigated” when officer was standing  
6 momentarily behind an operational vehicle); *see, e.g., Mattos v. Agarano*, 661 F.3d  
7 433, 441 (9th Cir. 2011) (en banc). The importance of this second *Graham* factor was  
8 highlighted by the Ninth Circuit when it held that the immediacy of the threat of a  
9 person pointing a replica gun at officers outweighed the bulk of *Graham* factors  
10 favoring the person fatally shot. *Estate of Strickland v. Nevada County*, 69 F.4th 614,  
11 621-22 (9th Cir. 2023) (distinguishing the case from other replica/toy gun cases on  
12 the basis that in those cases the persons holding the toy/replica guns did not point it  
13 at officers and the courts’ analysis did not hinge on the misidentification of the gun).

14 Peace officers may reasonably use deadly force whenever they have “probable  
15 cause to believe that [a] suspect poses a threat of serious physical harm, either to the  
16 officer or to others.” *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). The Ninth Circuit  
17 has emphasized that, as a matter of common sense, an armed suspect represents the  
18 paradigm threat to officer safety. *See, Smith v. City of Hemet*, 394 F.3d 689, 704 (9th  
19 Cir. 2005) (en banc) (“[W]here a suspect threatens an officer with a weapon..., the  
20 officer is justified in using deadly force.”); *see also, Watkins v. City of San Jose*, 2017  
21 WL 1739159, at \*8 (C.D. Cal 2017) (citing *Smith v. City of Hemet* with approval).  
22 Indeed, “where the totality of the circumstances could cause a reasonable police  
23 officer to conclude that a suspect is reaching for a gun, the officer’s use of deadly  
24 force in self-defense is justified.” *Baldrige v. City of Santa Rosa*, 1999 WL 66141,  
25 at \*7 (N.D. Cal.1999); *see, Reynolds v. County of San Diego*, 858 F.Supp. 1064, 1072  
26 (S.D. Cal.1994) (citing cases that “support the general principle that an officer may  
27 reasonably use deadly force when he or she confronts an armed suspect in close

1 proximity whose actions indicate an intent to attack.”), remanded on other grounds,  
2 84 F.3d 1162 (9th Cir. 1996); *accord Wilkinson v. Torres*, 610 F.3d 546, 553 (9th  
3 Cir. 2010) (“the Fourth Amendment does not require omniscience,’ and absolute  
4 certainty of harm need not precede an act of self-protection.”) (citation omitted).

5 Consistent with these principles, courts have repeatedly held that an actionable  
6 threat justifying the use of deadly force when a suspect even appears to reach for a  
7 potential gun. *See, Estate of Moppin-Buckskin v. City of Oakland*, 2010 WL 147976,  
8 at \*4 (N.D. Cal. 2010) (“The officers shot Mr. Moppin only after he failed to come  
9 toward them, as ordered, dropped his hands and then made a movement toward his  
10 waist area as though reaching for a weapon. All three officers who could see Mr.  
11 Moppin unequivocally thought that he was reaching for a gun and feared for their  
12 safety. Therefore, in this case, the test for objective reasonableness is met.”); *Foster*  
13 *v. City of Fresno*, 392 F.Supp.2d 1140, 1157 (E.D. Cal. 2005) (where suspect “moved  
14 his arm down toward his waistband area...a reasonable officer in Officer Cornelison’s  
15 position would have believed that [the suspect] posed an immediate threat of serious  
16 harm. Officer Cornelison’s application of deadly force was thus objectively  
17 reasonable.”).

18 Case law is clear that when Decedent reached for his waistband and withdrew  
19 a gun, as was the case here, Defendants were justified in shooting. *Cruz v. City of*  
20 *Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014). “[F]or a judge ruling on the officers’  
21 motion for summary judgment, this translates to a different question: Could any  
22 reasonable jury find it more likely than not that Cruz *didn’t* reach for his waistband?”  
23 *Id.* at 1079 (emphasis in original). “It would be unquestionably reasonable for police  
24 to shoot a suspect in Cruz’s position if he reaches for a gun in his waistband, or even  
25 if he reaches there for some other reason.” *Id.* at 1078. “Given Cruz’s dangerous and  
26 erratic behavior up to that point, the police would doubtless be justified in responding  
27 to such a threatening gesture by opening fire.” *Id.*



1 than merely acting negligently or unreasonably.” *Peck v. Montoya*, 51 F.4th 877, 893  
2 (9th Cir. 2022) (internal citations omitted). “We apply the purpose-to-harm standard  
3 when officials were required to make “repeated split-second decisions” about how  
4 best to respond to a risk, such as during a high-speed car chase or when confronting a  
5 threatening, armed suspect.” *Peck v. Montoya*, 51 F.4th 877, 893 (9th Cir. 2022)  
6 citing *Porter*, 546 F.3d at 1139 (citation omitted); *see, e.g., Lewis*, 523 U.S. at 853–  
7 54; *Hayes v. Co. of San Diego*, 736 F.3d 1223, 1230 (9th Cir. 2013); *Karam v. City*  
8 *of Burbank*, 352 F.3d 1188, 1194 (9th Cir. 2003) (explaining that “speculation as  
9 to...improper motive does not rise to the level of evidence sufficient to survive  
10 summary judgment.”).

11 Further, for Plaintiffs to establish a claim for interference with a familial  
12 relationship, they must prove that Defendants actually interfered with their  
13 relationship to decedent. U.S. Const. Amend. XIV, § 1; *Kelson v. City of Springfield*,  
14 767 F.2d 651, 654 (9th Cir. 1985), overruled on other grounds by *Daniels v. Williams*,  
15 474 U.S. 327 (1986); *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir. 1987).  
16 The 9th Circuit “recognized that parents have a Fourteenth Amendment liberty  
17 interest in the companionship and society of their children. *Wilkinson v. Torres*, 610  
18 F.3d 546, 554 (9th Cir. 2010). To state a claim for loss of familial association, a  
19 plaintiff must show that official conduct ““shocks the conscience’ in depriving family  
20 members of a liberty interest in the companionship and society of a family member.”  
21 *Estate of Chivrell v. City of Arcata*, 694 F.Supp.3d 1218, 1231 citing *Wilkinson v.*  
22 *Torres*, 610 F.3d 546, 554 (9th Cir. 2010).

23 As was aptly stated in *Caban v. Mohammed*, 441 U.S. 380, 397 (1979),  
24 “Parental rights do not spring full-blown from the biological connection between  
25 parent and child. They require relationships more enduring.” In the context of parent-  
26 child relationships specifically, the Supreme Court has emphasized that the rights of  
27 parents are a counterpart of the responsibilities they have assumed: “the mere  
28



1 existence of a biological link does not merit equivalent constitutional protection.”  
2 *Lehr v. Robertson*, 463 U.S. 284, 261 (1983). Judicially enforceable Fourteenth  
3 Amendment interests require enduring relationships reflecting an assumption of  
4 parental responsibility and “stem[ ] from the emotional attachments that derive from  
5 the intimacy of daily association, and from the role it plays in promoting a way of life  
6 through the instruction of children.” *Id.*

### 7 **III. QUALIFIED IMMUNITY**

8 Qualified immunity protects peace officers “from liability for civil damages  
9 insofar as their conduct does not violate clearly established statutory or constitutional  
10 rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457  
11 U.S. 800, 818 (1982). It “is an immunity from suit rather than a mere defense to  
12 liability.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

13 There is no precedent that indicates a deputy cannot fire upon a person who  
14 suddenly withdrew his firearm and has not vocalized their surrender in any way. *See*,  
15 *Reynolds v. County of San Diego*, 858 F.Supp. 1064, 1072 (S.D. Cal. 1994) (“[A]n  
16 officer may reasonably use deadly force when he or she confronts an armed suspect  
17 in close proximity whose actions indicate an intent to attack. In these circumstances,  
18 the Courts cannot ask an officer to hold fire in order to ascertain whether the suspect  
19 will, in fact, injure or murder the officer.”).

20 Moreover, “[i]t is **the plaintiff** who bears the **burden** of showing that the rights  
21 allegedly violated were clearly established.” *Shafer v. Cty. of Santa Barbara*, 868  
22 F.3d 1110, 1118 (9th Cir. 2017) (emphasis added). In order to discharge this burden,  
23 a Section 1983 plaintiff must point to case law that states “a clearly established rule  
24 prohibiting the [public employee] from acting as he did . . . [i]n the **circumstances**  
25 **presented** to the [employee].” *Saucier v. Katz*, 533 U.S. 194, 209 (2001) (emphasis  
26 added). “This requires a high ‘degree of specificity’” (*District of Columbia v. Wesby*,  
27 138 S.Ct. 577, 590 (2018))(citations omitted), inasmuch as qualified immunity is a

1 “fact-specific, highly contextualized” inquiry. *Hamby v. Hammond*, 821 F.3d 1085,  
2 1092 (9th Cir. 2016); *see, White v. Pauly*, 137 S.Ct. 548, 552 (2017) (“As this Court  
3 explained decades ago, the clearly established law must be ‘particularized’ to the facts  
4 of the case.”); *Sharp v. County of Orange*, 871 F.3d 901, 911 (9th Cir. 2017)  
5 (“Plaintiffs must point to prior case law that articulates a constitutional rule specific  
6 enough to alert these [public employees] *in this case* that *their particular conduct* was  
7 unlawful.”) (italics original); *id.* at 917 (“Plaintiffs point only to cases that establish  
8 the general framework for evaluating how much force is constitutionally excessive. .  
9 . But that is not enough to defeat a qualified-immunity defense.”).

10 In *Alford v. Humboldt County*, 785 F.Supp.2d 867, 872, 877-79, the Court  
11 found deputies entitled to qualified immunity for using chemical agents to evacuate a  
12 barricaded suspect potentially armed with a lethal weapon.

13 Deputies are not required to wait and see what a suspect will do before using a  
14 taser to apprehend him. *See, Spencer v. Pew*, 117 F.4th 1130, 1139 (9th Cir. 2024)  
15 (“But even taking as true that Spencer told the officers that his hands were ‘locked  
16 up,’ we cannot say that every reasonable officer, considering the objective  
17 circumstances concerning the nature and length of Spencer’s non-compliance, would  
18 have taken his statements at face value.”); *accord Winterrowd v. Nelson*, 480 F.3d  
19 1181, 1184 (9th Cir. 2007) (noting that an officer need not “unduly credit[ ]” a  
20 suspect’s claim that he is “physically unable to comply with a request”). The law did  
21 not require Defendants to wait to see what action Plaintiff may take next. *See,*  
22 *Wilkinson*, 610 F.3d at 553 (“‘the Fourth Amendment does not require omniscience,’  
23 and absolute certainty of harm need not precede an act of self-protection.”) (citation  
24 omitted). Rather, in such a situation, with lives on the line, the authorities cited above  
25 readily permitted the non-lethal uses of force employed by Defendants to end the  
26 unabated threat presented by Plaintiff. *See, Spencer*, 117 F.4th at 1140 (“Even taking  
27 the evidence in the light most favorable to Spencer, his objective actions made it very



1 difficult for the officers to handcuff him, resulting in an extended struggle and  
2 multiple uses of various types of force (a stomach punch, head strikes, and taser shots)  
3 that each could reasonably be thought to be likely to reduce Spencer’s non-  
4 compliance with being handcuffed.”); *see also, Hughes v. Rodriguez*, 31 F.4th 1211,  
5 1222 (9th Cir. 2022) (affirming summary judgment, reasoning that use of force was  
6 proportional to the “threats to the safety of [the officers], as reasonably perceived by  
7 the responsible officials on the basis of the facts known to them”). Given the threat  
8 of Decedent while he still had his firearm, there is not clearly established law Vaccari  
9 could not use a taser to secure Puga.

10 **IV. STATE CLAIMS**

11 **A. WRONGFUL DEATH DAMAGES**

12 Plaintiffs cannot recover for wrongful death against the deputies who did not  
13 cause the death. *Lopez v. City of Los Angeles*, 196 Cal.App.4th 675, 682, 688 (2011)  
14 (four officers fired upon suspect and the Court held the officers who did not fire the  
15 fatal shot were not liable for negligence or wrongful death).

16 **B. FAILURE TO ALLEGE LESS LETHAL AND NEGLIGENT**  
17 **TACTICS IN THEIR TORT CLAIM OR THE TAC**

18 Compliance with the tort claim presentation requirements is a condition  
19 precedent to suit and the failure to comply bars suit for money damages. Cal. Gov.  
20 Code § 945.4; *see e.g., DiCampi-Mintz v. County of Santa Clara*, 55 Cal.4th 983, 991  
21 (2012). The requirements are mandatory and strict compliance is required. *Wood v.*  
22 *Riverside Gen. Hosp.*, 25 Cal. App 4th 1113, 1119 (1994). Gov. Code § 910 requires:  
23 “the facts constituting the causes of action pleaded in the complaint must substantially  
24 correspond with the circumstances described in the claims as the basis of the plaintiff’s  
25 injury.” *Connelly v. State of California*, 3 Cal.App.3d 744, 743 (1970). Where there  
26 has been an attempt to comply but the compliance is defective, the test of substantial  
27 compliance controls. Under this test, the court must ask whether sufficient

1 information is disclosed on the face of the filed claim “to reasonably enable the public  
2 entity to make an adequate investigation of the merits of the claim and to settle it  
3 without the expense of a lawsuit.” *City of San Jose v. Superior Court*, 12 Cal.3d 447,  
4 456 (1974). The doctrine of substantial compliance, however, cannot cure total  
5 omission of an essential element from the claim or remedy a plaintiff’s failure to  
6 comply meaningfully with the statute. *Hall v. City of Los Angeles*, 19 Cal.2d 198  
7 (1941); *Loehr v. Ventura County Community College Dist.*, 147 Cal.App.3d 1071,  
8 1082-83 (1983). Gov. Code § 910 provides that the claim should state the “date,  
9 place, and other circumstances of the occurrence or transaction which gave rise to the  
10 claim asserted.” “[T]he purpose of these statutes is ‘to provide the public entity  
11 sufficient information to enable it to adequately investigate claims and to settle them,  
12 if appropriate, without the expense of litigation.’” *Connelly v. County of Fresno*, 146  
13 Cal.App.4th 29, 38 (2006) quoting *Stockett v. Assoc. of Cal. Water Agencies Joint*  
14 *Powers Ins. Authority*, 34 Cal.4th 441, 446 (2004).

15 It is well-settled Plaintiffs may not use an opposition to a motion for summary  
16 judgment as a “procedural second chance to flesh out inadequate pleadings,”  
17 amending their complaint to add claims they had ample time to allege. *Newton v.*  
18 *American Debt Services, Inc.*, 75 F.Supp.3d 1048, 1063 quoting *Wasco Prods., Inc.*  
19 *v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006).

20 **C. THE REASONABLENESS OF FORCE DISPOSES WITH STATE**  
21 **CLAIMS**

22 Should the Court determine there was no excessive force as a matter of law,  
23 Plaintiff’s state law claims also must fail. *See, e.g., Moore v. City of Berkley*, 2016  
24 WL 6024530, at \*7 (N.D. Cal. 2016) (“In California, state law claims for wrongful  
25 death and battery at the hands of the police rise and fall with federal Section 1983  
26 claims. [Citations]. The same is true for a Bane Act claim, which requires a civil  
27 rights violation ‘by threat, intimidation, or coercion.’ [Citation]. Because the arrest  
28

1 and use of force did not violate Moore's Fourth Amendment rights, all three claims  
2 fall away.”); *Donaldson v. United States*, 2018 WL 1089986, at \*13 (S.D. Cal. 2018)  
3 (“As with negligence, claims of excessive force under California law are analyzed  
4 under the same standard of objective reasonableness used in Fourth Amendment  
5 claims.”) (citations omitted); *Sorgen v. City & County of San Francisco*, 2006 WL  
6 2583683, at \*9 (N.D. Cal. 2006) (“[T]he law governing Plaintiff’s state law claim for  
7 assault and battery/excessive force is the same as that used to analyze Plaintiff’s  
8 [federal] claim for excessive force . . . Accordingly, Plaintiffs’ claim of battery under  
9 state law fails for the same reasons [as his federal claim]. . . .”); *Watkins v. City of San*  
10 *Jose*, 2017 WL 1739159, at \*20 (N.D. Cal., 2017) (“The California Court of Appeal  
11 has held that a determination that an officer’s use of deadly force is objectively  
12 reasonable under § 1983 precludes negligence, assault, and battery claims.”)  
13 (citations omitted); *Susag v. City of Lake Forest*, 94 Cal.App.4th 1401, 1412-1413  
14 (2002) (“[I]t appears unsound to distinguish between Section 1983 and state law  
15 claims arising from the same alleged misconduct.”).

16 **D. THERE IS NO EVIDENCE COUNTY DEFENDANTS’ TACTICS**  
17 **WERE NEGLIGENT**

18 There is no evidence that any tactics by the County Defendants were outside of  
19 the realm of reason given the actions of Puga. *Brown v. Ransweiler*, 171 Cal. App.  
20 4th 516, 537-538 (2009) (“As long as an officer’s conduct falls within the range of  
21 conduct that is reasonable under the circumstances, there is no requirement that he or  
22 she choose the ‘most reasonable’ action or the conduct that is the least likely to cause  
23 harm and at the same time the most likely to result in successful apprehension of a  
24 violent suspect, in order to avoid liability for negligence”); *see Golick*, 82 App. 5th at  
25 1148 (“In volatile situations, one can always argue that the arrival of police officers  
26 caused incremental increase in tension at the scene, and thus increased the risk of  
27 injury occurring, and whenever tragedy ensues one can argue that a different police

1 response would have produced a better outcome. But this sort of speculative, after-  
2 action critique falls short” in subjecting an officer to tort liability for negligence).

3  
4  
5  
6 DATED: February 20, 2025

**LYNBERG & WATKINS**  
A Professional Corporation

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